

This letter discusses the changes to the enterprise zone building materials exemption as a result of Public Act 91-0954. See 35 ILCS 120/5k. (This is a GIL.)

April 4, 2002

Dear Xxxxx:

This letter is in response to your letter dated February 13, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We will start construction on a new 24-story residential building this spring, continuing into 2003. The new building is located in Enterprise Zone #, as has been verified by the CITY. We anticipate that most of our construction materials will come from suppliers located in the CITY area, however, some materials may also come from elsewhere in Illinois, neighboring states and COUNTRY.

We request a letter of general understanding from the Illinois Department of Revenue to clarify the following issues:

1. In general, please clarify how the revised enterprise zone regulations affect exemption for sales taxes.
2. It is our understanding that the new regulations governing enterprise zone sales tax exemption went into effect on January 1, 2002. Is this correct?
3. Are ALL sales taxes exempt from collection (i.e. State, Municipal, County, Regional Transit Authority, etc.)?
4. Are excise taxes exempt from collection?
5. Would materials purchased from neighboring states and Canada also be exempt from sales and/or excise taxes?

Thank you for your assistance with these clarifications. If you have any questions, please feel free to call me.

As you may be aware, prior to January 1, 2002, in order to qualify for the enterprise zone building materials exemption from sales tax, the building materials had to be purchased from a retailer located in a jurisdiction (municipality or unincorporated area of a county) that created the

enterprise zone into which the building materials were to be incorporated. Effective January 1, 2002, Public Act 91-0954 amended the Retailers' Occupation Tax Act at 35 ILCS 120/5k to remove the requirement that the retailer be located in the jurisdiction that created the enterprise zone into which the building materials will be incorporated. In other words, purchasers can now make qualifying purchases from any retailer, including those located outside the State or even outside the U.S. However, the law is not unconditional in this regard. It also provides that any ordinance in effect at the Illinois retailer's location that restricts the enterprise zone exemption will control the sale. For example, a local ordinance could restrict the exemption to building materials purchased for a job for which a building permit has been issued. Or, it could restrict the exemption to building materials purchased for incorporation into commercial property. It would be a good idea to review any local ordinances regarding any restrictions.

As a result of Public Act 91-0954, the Department has updated its enterprise zone regulations at 86 Ill. Adm. Code 130.1951. You can review them on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us).

The exemption applies to both state and local sales taxes on qualifying building materials. Some examples of the kind of building materials that could qualify include common building materials such as lumber, bricks, and cement, plumbing systems and components thereof, heating systems and components thereof, electrical systems and components thereof, central air conditioning systems, ventilation systems and components thereof, built-in cabinets, and built-in appliances. Items that are not physically incorporated into the real estate cannot qualify for the exemption. Examples of this include tools, machinery, equipment, fuel, forms and other items that may be used by a construction contractor at an enterprise zone building site, but are not physically incorporated into the real estate, and free-standing appliances such as stoves and refrigerators if they are connected to and operate from a building's electrical or plumbing system but do not become a component of those systems. See 86 Ill. Adm. Code 130.1951(d) and (e) of the proposed regulations. The exemption does not apply to excise taxes.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

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